

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

SERIOUS USA, INC.; SERIOUS IP, INC.;
and DXPDD, LLC.,

Plaintiffs,

v.

CD DIGITAL CARD; CD WORKS; DISC
MAKERS; IMX SOLUTIONS, INC.;
INFINITE MARKETING INC.; INGRAM
MICRO INC.; L&M OPTICAL DISC, LLC;
MICROVISION DEVELOPMENT, INC.;
ONEDISC.COM, INC.; and SONARUS
CORPORATION,

Defendants.

No. 08-CV-4808 (GBD)(AJP)

JURY TRIAL DEMANDED

ANSWER AND AFFIRMATIVE DEFENSES OF INGRAM MICRO INC.

Defendant Ingram Micro Inc. ("Ingram Micro") hereby answers the Complaint for Patent Infringement dated May 22, 2008 (the "Complaint") as follows:

THE PARTIES

1. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 1, and therefore denies them.

2. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 2, and therefore denies them.

3. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 3, and therefore denies them.

4. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 4, and therefore denies them.

5. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 5, and therefore denies them.

6. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 6, and therefore denies them.

7. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 7, and therefore denies them.

8. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 8, and therefore denies them.

9. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 9, and therefore denies them.

10. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 10, and therefore denies them.

11. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 11, and therefore denies them.

12. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 12, and therefore denies them.

13. Ingram Micro admits the allegations of paragraph 13.

14. Ingram Micro admits that it conducts business within the Southern District of New York. Ingram Micro denies that it commits or has committed acts of patent infringement within or outside of the Southern District of New York.

15. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 15, and therefore denies them.

16. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 16, and therefore denies them.

17. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 17, and therefore denies them.

18. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 18, and therefore denies them.

19. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 19, and therefore denies them.

20. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 20, and therefore denies them.

21. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 21, and therefore denies them.

22. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 22, and therefore denies them.

JURISDICTION AND VENUE

23. Ingram Micro admits that Plaintiffs purport to file this action under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* The remaining material allegations in paragraph 23 state a legal conclusion to which no response is required.

24. The material allegations in paragraph 24 state a legal conclusion to which no response is required.

PATENTS IN SUIT

25. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 25, and therefore denies them.

26. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 26, and therefore denies them.

27. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 27, and therefore denies them.

28. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 28, and therefore denies them.

29. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 29, and therefore denies them.

30. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 30, and therefore denies them.

31. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 31, and therefore denies them.

32. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 32, and therefore denies them.

33. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 33, and therefore denies them.

COUNT 1

Infringement of United States Design Patent No. D503,404 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc, and Sonarus

34. Ingram Micro denies that it has infringed, contributed to infringement, and/or induced infringement of the '404 Patent at any time. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the other material allegations contained in paragraph 34, and therefore denies them.

35. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 35, and therefore denies them.

36. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 36, and therefore denies them.

37. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 37, and therefore denies them.

38. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 38, and therefore denies them.

39. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 39, and therefore denies them.

40. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 40, and therefore denies them.

41. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 41, and therefore denies them.

42. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 42, and therefore denies them.

43. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 43, and therefore denies them.

44. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 44, and therefore denies them.

45. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 45, and therefore denies them.

46. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 46, and therefore denies them.

47. Ingram Micro denies the allegations in paragraph 47.

48. Ingram Micro denies the allegations in paragraph 48.

49. Ingram Micro denies the allegations in paragraph 49.

50. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 50, and therefore denies them.

51. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 51, and therefore denies them.

52. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 52, and therefore denies them.

53. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 53, and therefore denies them.

54. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 54, and therefore denies them.

55. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 55, and therefore denies them.

56. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 56, and therefore denies them.

57. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 57, and therefore denies them.

58. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 58, and therefore denies them.

59. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 59, and therefore denies them.

60. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 60, and therefore denies them.

61. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 61, and therefore denies them.

COUNT II

Infringement of United States Design Patent No. 6,510,124 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc, and Sonarus

62. Ingram Micro denies that it has infringed, contributed to infringement, and/or induced infringement of the '124 Patent at any time. Ingram Micro is without knowledge or

information sufficient to form a belief as to the truth of the other material allegations contained in paragraph 34, and therefore denies them.

63. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 63, and therefore denies them.

64. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 64, and therefore denies them.

65. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 65, and therefore denies them.

66. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 66, and therefore denies them.

67. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 67, and therefore denies them.

68. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 68, and therefore denies them.

69. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 69, and therefore denies them.

70. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 70, and therefore denies them.

71. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 71, and therefore denies them.

72. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 72, and therefore denies them.

73. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 73, and therefore denies them.

74. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 74, and therefore denies them.

75. Ingram Micro denies the allegations in paragraph 75.

76. Ingram Micro denies the allegations in paragraph 76.

77. Ingram Micro denies the allegations in paragraph 77.

78. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 78, and therefore denies them.

79. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 79, and therefore denies them.

80. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 80, and therefore denies them.

81. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 81, and therefore denies them.

82. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 82, and therefore denies them.

83. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 83, and therefore denies them.

84. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 84, and therefore denies them.

85. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 85, and therefore denies them.

86. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 86, and therefore denies them.

87. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 87, and therefore denies them.

88. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 88, and therefore denies them.

89. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 89, and therefore denies them.

COUNT III

Infringement of United States Design Patent No. 6,762,988 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc, and Sonarus

90. Ingram Micro denies that it has infringed, contributed to infringement, and/or induced infringement of the '988 Patent at any time. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the other material allegations contained in paragraph 34, and therefore denies them.

91. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 91, and therefore denies them.

92. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 92, and therefore denies them.

93. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 93, and therefore denies them.

94. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 94, and therefore denies them.

95. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 95, and therefore denies them.

96. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 96, and therefore denies them.

97. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 97, and therefore denies them.

98. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 98, and therefore denies them.

99. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 99, and therefore denies them.

100. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 100, and therefore denies them.

101. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 101, and therefore denies them.

102. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 102, and therefore denies them.

103. Ingram Micro denies the allegations in paragraph 103.

104. Ingram Micro denies the allegations in paragraph 104.

105. Ingram Micro denies the allegations in paragraph 105.

106. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 106, and therefore denies them.

107. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 107, and therefore denies them.

108. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 108, and therefore denies them.

109. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 109, and therefore denies them.

110. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 110, and therefore denies them.

111. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 111, and therefore denies them.

112. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 112, and therefore denies them.

113. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 113, and therefore denies them.

114. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 114, and therefore denies them.

115. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 115, and therefore denies them.

116. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 116, and therefore denies them.

117. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 117, and therefore denies them.

COUNT IV

Infringement of United States Design Patent No. 7,308,696 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc, and Sonarus

118. Ingram Micro denies that it has infringed, contributed to infringement, and/or induced infringement of the '696 Patent at any time. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the other material allegations contained in paragraph 34, and therefore denies them.

119. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 119, and therefore denies them.

120. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 120, and therefore denies them.

121. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 121, and therefore denies them.

122. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 122, and therefore denies them.

123. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 123, and therefore denies them.

124. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 124, and therefore denies them.

125. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 125, and therefore denies them.

126. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 126, and therefore denies them.

127. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 127, and therefore denies them.

128. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 128, and therefore denies them.

129. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 129, and therefore denies them.

130. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 130, and therefore denies them.

131. Ingram Micro denies the allegations in paragraph 131.

132. Ingram Micro denies the allegations in paragraph 132.

133. Ingram Micro denies the allegations in paragraph 133.

134. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 134, and therefore denies them.

135. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 135, and therefore denies them.

136. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 136, and therefore denies them.

137. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 137, and therefore denies them.

138. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 138, and therefore denies them.

139. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 139, and therefore denies them.

140. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 140, and therefore denies them.

141. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 141, and therefore denies them.

142. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 142, and therefore denies them.

143. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 143, and therefore denies them.

144. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 144, and therefore denies them.

145. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraph 145, and therefore denies them.

COUNTS V-IX

146. Counts V through IX (paragraphs 146-186) are not alleged against Ingram Micro, and no facts related to or pertaining to Ingram Micro are alleged in these Counts. Ingram Micro is without knowledge or information sufficient to form a belief as to the truth of the material allegations contained in paragraphs 146-186, and therefore denies them. To the extent that Plaintiffs seek to assert the claims in Counts V through IX (paragraphs 146-186) against Ingram Micro, Ingram Micro denies that it has infringed, contributed to infringement, and/or induced infringement of the cited patents at any time.

AFFIRMATIVE DEFENSES

First Affirmative Defense

147. The Complaint, and each and every purported claim for relief alleged therein, fails to state a claim upon which relief can be granted.

Second Affirmative Defense

148. Ingram Micro did not infringe, directly or indirectly, any valid claim of any patent in suit, particularly the '404 Patent, the '124 Patent, the '988 Patent or the '696 Patent.

Third Affirmative Defense

149. On information and belief, the '404 Patent is invalid and/or unenforceable under one or more of the provisions in Title 35 of the United States Code, including but not limited to, §§ 101, 102, 103, and/or 112.

Fourth Affirmative Defense

150. On information and belief, the '124 Patent is invalid and/or unenforceable under one or more of the provisions in Title 35 of the United States Code, including but not limited to, §§ 101, 102, 103, and/or 112.

Fifth Affirmative Defense

151. On information and belief, the '988 Patent is invalid and/or unenforceable under one or more of the provisions in Title 35 of the United States Code, including but not limited to, §§ 101, 102, 103, and/or 112.

Sixth Affirmative Defense

152. On information and belief, the '696 Patent is invalid and/or unenforceable under one or more of the provisions in Title 35 of the United States Code, including but not limited to, §§ 101, 102, 103, and/or 112.

Seventh Affirmative Defense

153. On information and belief, Plaintiffs, and each of them, lack standing because they do not have valid ownership of the patents in suit.

Eighth Affirmative Defense

154. The Complaint, and each and every purported claim for relief alleged therein, is barred by the doctrine of laches.

Ninth Affirmative Defense

155. On information and belief, Plaintiffs are estopped from asserting one or more of the claims or claim constructions in the patents-in-suit.

Tenth Affirmative Defense

156. On information and belief, Plaintiffs' claims are barred by the applicable statute of limitations.

PRAYER FOR RELIEF

WHEREFORE, Ingram Micro prays for judgment against Plaintiffs as follows:

- a. That Plaintiffs take nothing against Ingram Micro by reason of this lawsuit;
- b. That the Complaint be dismissed with prejudice in its entirety;
- c. That judgment be rendered in favor of Ingram Micro;
- d. An adjudication that the patents in suit are invalid and unenforceable;
- e. An adjudication that this is an exceptional case under 35 U.S.C. § 285, and, accordingly, that Ingram Micro be awarded its reasonable attorneys' fees, costs and other expenses incurred in defense of this action; and
- f. For such other relief as the Court deems proper.


JURY DEMAND

Ingram Micro demands trial by jury of the claims in this action.

Dated: July 14, 2008
New York, New York

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By:



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INGRAM MICRO INC.